



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/781,579	01/09/97	GARDINER	B GUNRY003RED/

QM31/0720

BRIAN I MARCUS
FLIESLER DUBB MEYER AND LOVEJOY
FOUR EMBARCADERO CENTER
SUITE 400
SAN FRANCISCO CA 94111-4156

EXAMINER	
PHAM, T	
ART UNIT	PAPER NUMBER
3731	
DATE MAILED:	07/20/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

DETAILED ACTION

Election/Restriction

Applicant's election of Group I in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (M

Response to Amendment

The reply filed on May 1, 1998 is not fully responsive to the prior Office action because of the following omission(s) or matter(s):

Applicant did not elect a single disclosed species with respect to the Election of Species Requirement.

Applicant did not provide an identification of the species that is elected and a listing of all claims readable thereon, including any claims subsequently added.

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Again, the Election of Species Requirement has been reproduced in full below.

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1 - Figures 1A-1D.

Species 2 - Figures 2F-2H.

With respect to the instrument used to apply the fastener:

Species A - controls comprises hand-actuated controls.

Species B - controls comprises automated robotic controls.

Species C - controls comprises motor.

Species D - controls comprises pneumatic means.

Species E - controls comprises hydraulic means

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations

of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Mr. Marcus on July 16, 1998 to request an oral election to the above restriction requirement, but did not result in an election being made since the examiner could not reach Mr. Marcus.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Conclusion

Any inquiry concerning this communication or earlier communications should be directed to Tina D. Pham at telephone number (703) 308-0824. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM.

If an inordinate number of attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Michael Buiz can be reached at (703) 308-0871. The fax number for the Art Unit is (703) 308-0758.

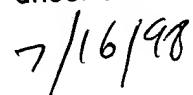
Any inquiry of a general nature or relating to the status of the application should be directed to the Group receptionist at (703) 308-0858.

Tina T. D. Pham

July 16, 1998



MICHAEL BUIZ
SUPERVISORY PATENT EXAMINER
GROUP 3300



7/16/98